Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-952

RANDAL RUSH,
Defendant-Appellant,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.,

vs.

JEFFREY D. SAVCHUK,
Plaintiff-Appellee,

On Appeal from the Supreme Court of Minnesota

APPELLEE'S MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16 of the Supreme Court Rules, appellee hereby respectively moves the Court to dismiss the pending appeal in this matter, or, in the alternative, to affirm the judgment entered in this cause by the Supreme Court of the State of Minnesota. This motion is brought on the grounds that the appeal presents no substantial or undetermined federal question on which the decision of this appeal depends and thus does not require further argument.

STATEMENT OF ISSUES

Is Minnesota's pre-judgment garnishment procedure pursuant to Minn. Stat. §571.41, as construed and applied by the Minnesota Supreme Court consistent with the due process standards of *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569, 53 L. ed 2d 683 (1977)?

STATEMENT OF PROCEEDINGS

Appellee, a Minnesota resident for all relevant purposes of this appeal, was injured while a passenger in an automobile driven by defendant-appellant, an Indiana resident, in an accident in Indiana. Defendant was insured for automobile liaiblity purposes by garnishee-appellant which issued the particular policy in Indiana but which conducts a very substantial business in Minnesota. Appellee commenced suit in state court in Minnesota by causing a garnishment summons to be served upon the insurer in Minnesota pursuant to the challenged statute. Upon receipt of a "nothing owing" disclosure, appellee made a showing of probable cause before the Minnesota District Court and the court added garnishee as a party to the action, pending resolution of the suit on its merits. Defendant was personally served in Indiana with notice of the garnishment and the Summons and Complaint.

Appellants moved to dismiss the cause of action, alleging lack of jurisdiction by the Minnesota court over appellants and the subject matter and properly raising the constitutional issue. The trial court denied the motion and on appeal the Minnesota Supreme Court affirmed, both on the basis of state law and on the constitutionality of the procedure. Shortly, thereafter, the Minnesota Federal District

Court in *Jeans v. Mitchell*, 418 F.Supp. 730 (D.Minn. 1976) reaffirmed the constitutionality of the statute challenged herein as constructed and applied.

Appellants appealed to this Court and in an Order dated June 27, 1977 the judgment was vacated and the case remanded to the Minnesota Supreme Court in light of *Shaffer v. Heitner*, 433 U.S. 186 (1977). The Minnesota Supreme Court found the assertion of quasi-in-rem jurisdiction through garnishment of an insurer's obligation to an insured consistent with the due process standards of *Shaffer* and affirmed. This appeal was then taken.

ARGUMENT

The Appeal Presents No Substantial Federal Question Necessitating Further Argument.

1. There here exists the close connection between the property which is subject to garnishment and the subject matter of the underlying lawsuit such that the minimum contacts required for compliance with due process standards by *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945) and made applicable to quasi-in-rem actions by *Shaffer v. Heitner*, 433 U.S. 186 (1977) are met. In this case the property garnished was the liability insurer's obligation to defend and indemnify its insured, which obligation arose because of the accident constituting the underlying subject matter of the lawsuit. The Minnesota Supreme Court was correct in distinguishing this case from *Shaffer v. Heitner*, where the property requested bore no relation to the plaintiff's cause of action, but was merely a device to compel the defendant's personal appearance. Here, the property seized, the obligation, has no indepen-

dant significance apart from this type of litigation and in fact is being utilized for the very purpose for which it was procured. There thus exists more than the minimum contacts required for due process in *International Shoe* and *Shaffer*.

2. In the past this Court has twice refused to consider the procedure first established in *Seider v. Roth*, 17 N.Y. 2d 111, 269 N.Y.S. 2d 99, 216 N.E. 2d 312 (1966). This Court dismissed an appeal involving the propriety of attaching an insurer's obligation under state law in *Victor v. Lyon Associates, Inc.*, 21 N.Y. 2d 695, 287 N.Y.S. 2d 424, 234 N.E. 2d 459, appeal dismissed for want of a substantial federal question, *sub nom. Hanover Ins. v. Victor*, 393 U.S. 7, 89 S. Ct. 44, 21 L. Ed. 2d 385 (1968) and denied certiorari in a decision upholding the constitutionality of the *Seider* procedure in *Minichiello v. Rosenberg*, 410 F. 2d 106 (2nd Cir. 1968), cert. denied, 396 U.S. 844, 90 S. Ct. 69, 24 L. Ed. 2d 94, rehearing denied 396 U.S. 949, 90 S. Ct. 370, 24 L. Ed. 2d 254 (1969). Moreover, although appellant contends that the *Seider* procedure has been rejected in eleven states (J.S. page 11), in none of those decisions was the rejection grounded on a constitutional basis. Rather, in each state which rejected the procedure, the state courts, or the federal courts applying state law, concluded that the state garnishment statute itself did not support quasi-in-rem jurisdiction. Other courts, most notably, the Minnesota state and federal courts, have reached an opposite result. *Rintala v. Shoemaker*, 362 F. Supp. 1044 (D. Minn. 1973); *Jeans v. Mitchell, supra*. Courts have continued to uphold *Seider*-type jurisdiction in light of *Shaffer v. Heifner*. See *O'Connor v. Lee-Hy Paving Corp.*, 579 F. 2d 194 (2nd Cir. 1978); and *Alford v. McGaw*, 402 N.Y.S. 2d 499, 502 (N.Y. App. Div. 1978).

There is nothing about this present matter to suggest that it warrants further consideration by this Court.

CONCLUSION

On the basis of the arguments advanced and the authorities cited herein, it is respectfully submitted that appellee's motion to dismiss this appeal or, in the alternative, to affirm the judgment entered in this cause by the Supreme Court of the State of Minnesota be granted.

Respectfully submitted,

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